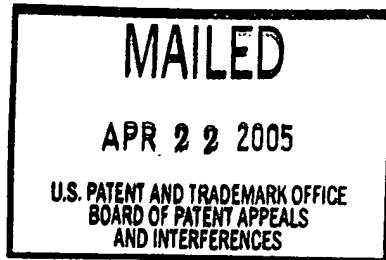


The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Ex parte RAJESH VALLABH



Appeal No. 2005-0530
Application No. 09/598,196

ON BRIEF

Before FRANKFORT, NASE, and NAPPI, Administrative Patent Judges.
NASE, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1 to 61, which are all of the claims pending in this application.

We AFFIRM-IN-PART.

BACKGROUND

The appellant's invention relates generally to merchandise transactions and, more particularly, to an automated method and system for making such transactions. (specification, p. 1). A copy of the claims under appeal is set forth in the appendix to the appellant's brief.

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Domain et al. (Domain)	5,158,155	Oct. 27, 1992
Jenkins	5,186,281	Feb. 16, 1993
Ruppert et al. (Ruppert)	5,640,002	June 17, 1997
Hall et al. (Hall)	6,026,375	Feb. 15, 2000
Matsumori	6,246,998	June 12, 2001

The following ten rejections under 35 U.S.C. § 103 are before us in this appeal:

1. Claims 1, 2 and 6-11 as being unpatentable over Domain in view of in view of Jenkins and Matsumori.
2. Claims 3-5 as being unpatentable over Domain, Jenkins and Matsumori as applied to claims 1 and 2 above, and further in view of Hall.
3. Claims 12, 18, 19, 26, 29, 30, 32, 33, 35, 40-45, 48, 49, 51, 53, 54, 58 and 59 as being unpatentable over Domain in view of Jenkins.

4. Claims 13-16 and 50 as being unpatentable over Domain and Jenkins, as applied to claims 12 and 49 above, and further in view of Matsumori.
5. Claim 17 and 22-25 as being unpatentable over Domain, Jenkins and Matsumori as applied to claim 13 above, and further in view of Hall.
6. Claim 20 as being unpatentable over Domain and Jenkins, as applied to claim 19 above, and further in view of Matsumori.
7. Claims 21, 27, 28, 31, 34, 36-39, 57, 60 and 61 as being unpatentable over Domain and Jenkins as applied to claims 12, 26, 30 and 49, above, and further in view of Ruppert.
8. Claims 46, 55 and 56 as being unpatentable over Domain and Jenkins, as applied to claim 12, and further in view of Hall.
9. Claim 47 as being unpatentable over Domain, Jenkins and Hall, as applied to claim 46 above, and further in view of Official Notice.
10. Claim 52 as being unpatentable over Domain and Jenkins, as applied to claim 49 above, and further in view of Matsumori.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellant regarding the above-noted rejections, we make reference to the answer (mailed July 30, 2004) for the examiner's complete reasoning in support of the

rejections, and to the brief (filed April 22, 2004) for the appellant's arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellant's specification and claims, to the applied prior art references, and to the respective positions articulated by the appellant and the examiner. As a consequence of our review, we make the determinations which follow.

In the brief, the appellant has provided the following groupings of claims:

- I. Claims 1 and 4 to 11 stand or fall together.
- II. Claim 2 stands alone.
- III. Claim 3 stands alone.
- IV. Claims 12 to 48 stand or fall together.
- V. Claims 49 to 61 stand or fall together.

In accordance with the appellant's grouping of claims and arguments provided, we need to review only the rejections of claims 1, 2, 3, 12 and 49 to decide the appeal on the ten rejections under 35 U.S.C. § 103 set forth above.

The test for obviousness is what the combined teachings of the references would have suggested to one of ordinary skill in the art. See In re Young, 927 F.2d 588, 591, 18 USPQ2d 1089, 1091 (Fed. Cir. 1991) and In re Keller, 642 F.2d 413, 425, 208 USPQ 871, 881 (CCPA 1981). Moreover, in evaluating such references it is proper to take into account not only the specific teachings of the references but also the inferences which one skilled in the art would reasonably be expected to draw therefrom. In re Preda, 401 F.2d 825, 826, 159 USPQ 342, 344 (CCPA 1968).

The conclusion that the claimed subject matter is obvious must be supported by evidence, as shown by some objective teaching in the prior art or by knowledge generally available to one of ordinary skill in the art that would have led that individual to combine the relevant teachings of the references to arrive at the claimed invention. See In re Fine, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). Rejections based on 35 U.S.C. § 103 must rest on a factual basis with these facts being interpreted without hindsight reconstruction of the invention from the prior art. The examiner may not, because of doubt that the invention is patentable, resort to speculation, unfounded assumption or hindsight reconstruction to supply deficiencies in the factual basis for the rejection. See In re Warner, 379 F.2d 1011, 1017, 154 USPQ 173, 178 (CCPA 1967), cert. denied, 389 U.S. 1057 (1968). Our reviewing court has repeatedly cautioned against employing hindsight by using the appellant's disclosure as

a blueprint to reconstruct the claimed invention from the isolated teachings of the prior art. See, e.g., Grain Processing Corp. v. American Maize-Products Co., 840 F.2d 902, 907, 5 USPQ2d 1788, 1792 (Fed. Cir. 1988).

With this as background, we analyze the prior art applied by the examiner in the rejections of claims 1, 2, 3, 12 and 49.

Domain

Domain's invention relates to a Vendors' Structural Complex that consolidates several vendors of retail goods and services such as groceries, pharmaceuticals, liquor, key duplication, video rentals, photography development, dry cleaning and laundry, and popular local take-out restaurants, or a single vendor that provides these various goods and services, in a single convenient drive-up Complex. The Vendors' Complex 10 shown in Figure 1 provides a structural complex that enables consumers to purchase goods and services from a single large vendor of various goods or from a variety of individual vendors of goods and services without exiting their vehicles and entering the Complex.

The Vendors' Complex 10 is generally comprised of a central warehouse facility 12, several customer order stations 14 interconnected with the warehouse facility,

several customer pick-up stations 16 interconnected with the warehouse facility, and a network of vehicle routing lanes 18 extending to and through the warehouse facility and passing by the customer order stations and pick-up stations. Generally, customers using the Vendors' Complex approach the Complex along the vehicle routing lanes and are directed to one of the customer order stations where they place their order for goods and/or services provided by vendors housed in the Complex. After placing their orders, the customers are then directed to drive their vehicles along the routing lanes to one of the several order pick-up stations where they receive their ordered goods. After receiving their ordered goods, the customers are directed along the vehicle routing lanes to the exit of the Vendors' Complex. The consumers entire shopping excursion including selecting desired goods and services from a variety of different vendors of those goods and services, ordering and paying for the desired goods and services, and receiving the ordered goods takes place without the consumer ever leaving their vehicle and in a correspondingly shorter period of time than heretofore would have been required for such an excursion.

Express Service

The first floor of the Vendors' Complex is occupied by several vendors of express goods and services located in structure 36. As shown in Figure 1, three locations are provided in the structure 36 of the first floor for express vendors.

Examples of such vendors include a frozen yogurt and ice cream vendor, a dry cleaning and laundry service, vendors of impulse items such as soft drinks, cigarettes and candy, vendors of packaging/copies, office supplies, and an express grocery pick-up service. Each of these express vendor locations is provided with a drive-up window (not shown) accessible from the vehicle routing lanes. The express grocery is also provided with a walk-up window (not shown) accessible from a sidewalk 48 bordering the second structure 36 of the Complex first floor. From the drive-up or walk-up windows of the express grocery, orders for groceries submitted by telephone or facsimile may be picked up by customers of the Vendors' Complex.

The second floor of the Vendors' Complex houses a goods compilation area 32 which includes a belt or roller conveyor branch 138 extending outwardly from a center conveyor circuit 82 to a dumbwaiter elevator 142 communicating with the express grocery pick-up location. Goods ordered by fax or telephone are delivered along the conveyor branch 138 to this dumbwaiter elevator 142 where they are removed from the conveyor and placed in the elevator to be delivered to the express grocery pick-up facility on the first floor. From the first floor the ordered goods are delivered to the customer through the drive-up window or walk-up window of the express grocery facility.

Express customers entering the Vendors' Complex along the right hand express lane 148 first encounter an express window control display 158 directing the customers to stop their vehicles in an express stacking area 162 until their desired express window (not shown) along the express lane 164 has opened. The express window control display 158 alternately displays a green or red light to direct customers in the stacking area 162 of the express lane to wait in the stacking area until their desired express window has opened and the vehicle last accessing the desired express window has exited the express lane. The express window control display will then display a green light directing the customer to proceed forward to their desired express window. As the customer drives their vehicle adjacent the desired express window, magnetic sensors (not shown) at the window location control the express window control display to display a red light indicating the particular express window is closed.

At each of the three express windows, there are provided additional stop and go signals 166, 168, 172. The three stop and go signals direct customers accessing a particular express window along the express lane 164 to remain at the express window while the associated light is red, thereby enabling other vehicles to pass the parked vehicles along the right hand side of the express lane 164. When the display light at the express window control display 158 has turned red to stop further vehicle traffic along the express lane 164, the stop and go signals 166, 168, 172 at the express

window locations will alternately display green to instruct the customers to exit the express window locations and proceed down the right hand side of the express lane 164 and exit the Complex.

Non-Express Service

In a typical transaction at an order station for the purchase of goods and services provided by the vendors housed in the Vendors' Complex, the non-express customer will first enter the Complex by driving their vehicle along the vehicle routing lanes to a vehicle stacking area 154 for the order stations 14. There they will be instructed by an order station control display 152 to stop and wait for the next available open customer order station 14. When a customer order station opens, the order station control display 152 will inform the customer which order station has opened and will instruct the customer to drive forward to the particular open order station.

As the customer's vehicle arrives at the open order station 14, magnetic traffic sensors located at that particular station will inform an order clerk in a clerk unit 26 communicating with that particular order station that a vehicle has arrived and has accessed the order station. The magnetic traffic sensors will also cause the order station control display 152 to display that the particular order station is occupied by a vehicle.

The customer next presents their order for desired goods and/or services to the order clerk by speaking to the clerk through an audio communication system 54 communicating the customer order station with the order clerk unit. As goods and/or services are ordered by the customer, the order station clerk enters the goods and/or services into a microprocessor terminal. The list of goods and services ordered and entered are displayed to the customer placing the order on one half of the screen of a video display 56 of the customer order station. Additional choices of particular types of goods available in a particular category requested by the customer are shown on the second side of the split screen. A listing and display of all the items available are provided on sign boards 66 on opposite sides of the vehicle, and on an overhead menu display 64. The video display also shows the customer the price of each of the individual items ordered and a total price including tax for the ordered goods and services. When the list of goods and services desired is finalized and a taxed total price is presented to the customer, the customer will then be directed to pay for the purchase with a credit card, debit card, food stamps, check or cash using a pneumatic tube dispatch system 62. The customer will place the credit card, debit card, food stamps, check or cash in the carrier of the pneumatic tube dispatch system, and the dispatch system will transfer the carrier to the order clerk processing the customer's order. When the purchase transaction is complete, the order clerk will send a receipt for the purchase, along with the customer's change through the carrier of the pneumatic

dispatch system to the order station where they will be received by the customer. The receipt received by the customer also identifies which pick-up station 16 the customer should next proceed to receive their ordered goods.

As the customer's purchase of goods and services is finalized, the microprocessor terminal of the order clerk who enters the order for goods and services will send information to each of the individual vendors of the goods and services ordered, causing the printers at the particular vendor locations to print a list identifying the goods and services ordered from that vendor. Each of the individual vendors will then assemble their ordered goods and place them in either a box or bag carrier on the belt or hook type conveyor branch, respectively, communicating the vendor with the goods compilation area 32 on the second floor of the Vendors' Complex. The carriers are then transported by the conveyor branches to the center conveyor circuit 82 in the goods compilation area.

The printer or CRT monitor in the goods compilation area 32 will also print out a total list of the goods and services ordered by each of the individual customers accessing an order station. Vendors' Complex employees in the goods compilation area will then compile the goods of each of the individual vendors into a single compiled order according to the list they receive at their printer or monitor. The list showing the

goods ordered by each of the individual customers will also show the particular pick-up station location of the nine pick-up station locations to which each order is to be sent. The Vendors' Complex employees in the goods compilation area verify that each of the goods ordered is present in the compiled total order before sending the compiled total order of goods along the conveyor branch communicating with the dumbwaiter elevator of the assigned pick-up station.

The printer or CRT monitor at the dumbwaiter elevator of the assigned pick-up station location will also print out a total listing of the goods ordered by the particular customer assigned to that pick-up station location. The total compiled goods of each order are received by a Vendors' Complex employee at the dumbwaiter elevator location, and the contents of the compiled order are checked once again to make sure they are complete. When the compiled order of goods has been verified at the dumbwaiter elevator location, the Vendors' Complex employee then places the goods in the dumbwaiter elevator and sends the goods down to the pick-up station location where they are received by the customer who ordered the goods. Once the customer receives their ordered goods at the pick-up station location, they will then proceed from the pick-up station location along the vehicle routing lanes 18 to the exit lane 174 and will then exit the Vendors' Complex.

Jenkins

Jenkins' invention relates to a method and system for retail checkout of purchased articles, and more particularly relates to such a method and system in which such articles are selected by customers from a display of samples of such articles, automatically retrieved from a product stocking area, placed in an article accumulating area, and provided to the customers after pre-check and finalizing check-out operations. Jenkins teaches (column 1, lines 13-27) that:

Efficient utilization of space, protection against shoplifting, avoidance of congestion arising from use of grocery carts in narrow aisles, rapid customer service and reduction in the number of required employees are all concerns that are relevant with respect to supermarkets and other types of self-service retail establishments. The conventional arrangement of a supermarket, in which customers move through aisles between shelves stocked with articles selected by customers and conveyed by grocery carts to checkout stations, provides problems in many of these areas. Arrangements have previously been suggested in which customers select articles for purchase from displayed samples, and the selected articles are taken from a supply area and provided to the customer.

Referring now to the diagrammatic plan view of Figure 1, a facility such as a retail establishment 20 has situated therein a plurality of display panels 22, arranged in pairs, from which customers can select articles which they desire to purchase. The pairs of display panels 22 are separated by a plurality of aisles 23. The establishment 20 also includes a pre-check terminal station 24, a product stocking area 26, an order accumulation area 28, a terminal station 30 associated with the accumulation area 28,

a customer order conveyor 32, a finalizing terminal 34 and an opening 36 for entry to and egress from the establishment 20. Outside and adjacent to the establishment 20 is a vehicle check-out area 38 through which automobiles 40 may move from a first area designated as "zone 1" to a second area designated as "zone 2". In "zone 1", an employee on foot carrying a wireless transceiver communicates the order of customer queuing to another employee, who also has a wireless transceiver, at the terminal station 30 in the accumulation area 28. Jenkins teaches (column 3, lines 42-44) that "[t]his assures that customers are attended to on a "first arrived, first served" basis, as they approach "zone 1" in their vehicles."

As shown in Figure 2, each display panel 22 includes at least one, and commonly two or more display areas 42. A customer 64 is shown in Figure 2 using a control section 62 associated with a display area 42. The control section 62 (shown in detail in Figure 5) includes a data entry device such as a keyboard or touch screen 66. Located above and to the right of the keyboard 66 is a smaller keyboard, key pad or touch screen 70 which, in the illustrated embodiment, includes twelve keys or areas 72 comprising the digits zero to 9, and two symbol keys. This key pad is used by the customer to enter into the system the quantity desired of the article selected. Also above the keyboard 66 and to the left thereof is a small panel 74 bearing three keys 76, 78 and 80. These keys are used to control the type of transaction to be performed.

Thus the customer depresses the select key 76 to cause a selection operation to take place. If it is desired to cancel an operation, the key 78 is depressed, and if it is desired to recall a previous operation for review or alteration, the key 80 is depressed.

Located below the keyboard 66 is a magnetic stripe reader 82 which is used by a customer to enter identification information, such as an account number, into the system in association with the transaction of selecting one or more articles from the display area 42 and entering the desired quantity of each into the key pad 70. This identification information may be taken from any appropriate type of customer card, such as a credit card, a debit card, or a special card issued by the establishment. Customarily the desired information would be sensed from a magnetic stripe on the card, but optical or other sensing could also be used if appropriate.

Referring back to Figure 1, the information associated with each article selection, including the identification of the article, the quantity desired, and the customer ID, will be transmitted by suitable means, such as an RS485 transmit/receive system, within the system to a pre-check terminal such as the terminal 24 and to the product stocking area 26. When the customer has selected all of the articles desired, by visiting all appropriate display panels 22, he or she then proceeds to the terminal 24, where an

employee of the establishment will provide a receipt including all of the details relating to all of the items selected.

The transmission of information will also control the stock retrieval system in the product stocking area 26 to cause the selected articles to be taken from the stocking area 26 and moved to an appropriate receptacle 88 in the order accumulation area 28. The selected articles could, if desired, be moved manually by employees of the establishment, but additional efficiency may be achieved if some automated system is employed, such as a system utilizing suitable industrial robots.

Shown in Figure 6 is a more detailed view of the order accumulation area 28. Each receptacle 88 (Figure 7) may take the form of an open container having sides 90, 92, 94, 96 and a bottom 98, and is of a size to accommodate a number and size of articles which might be purchased by a customer on a typical shopping trip. Each receptacle 88 is identified by an identification code so that it can be associated with a customer account. In the illustrated embodiment shown in Figure 6, the receptacles bear identification codes ID1 to ID 60, and are arranged in three double rows 100, 102 and 104, with aisles 106 and 108 therebetween. This arrangement facilitates the movement of selected articles from the product stocking area 26 to the item

accumulation area 28, and the placement of selected articles in the proper receptacle 88 for a given customer account.

The process by which a customer makes purchases in the retail establishment 20 and receives the purchased items is illustrated in the flow diagram of Figure 8.

Jenkins teaches (column 5, line 28, to column 6, line 33) that:

This process begins when the customer enters the store (block 110) and then proceeds to the desired aisle 23 (block 112), and stops at the desired display panel which contains the article which the customer wishes to purchase (block 114). The customer then enters his or her credit or other card in the magnetic stripe reader 82 (block 116) in order to provide an account number and identification which is used in association with the purchase to be made.

The customer then selects a desired one of the items displayed by using the keyboard or touch screen 66 to index a particular key or area corresponding to the location of the desired item in the display panel, as represented by block 118. Following this, the customer indicates the desired quantity by operating the key pad or touch screen 70, and then presses the select key 76, which causes the selected item and quantity to be itemized on the customer's account, as represented in block 120.

The customer then determines whether an additional item is desired from the same display panel, as represented by decision block 122. If so, the process returns via path 124 to blocks 118 and 120, so that additional selections can be made. If not, the customer removes the credit card from the MSR reader 82 (block 126).

A further determination is then made (block 128) as to whether all purchases of items displayed in that aisle have been made. If not, the process returns via path 130 to block 114, for further selection of items. If all desired purchases in the aisle have been made, the process continues via path 132 to a further decision block 134, where a determination is made as to whether shopping has been completed. If not, the process goes from block 134 via path

136 to block 112, where another aisle 23 of display panels 22 is entered for further shopping.

If shopping is completed, the customer proceeds to the pre-check terminal 24, as represented in block 138, and gives the terminal operator the previously used credit card. From the operator, the customer receives an itemized, totaled receipt with identification number and account verification, as represented in block 140. The information contained on the receipt is conveyed to the product stocking area 26, to enable the selected articles to be obtained, and to the finalizing terminal 34.

The customer then leaves the establishment 20 and drives his or her vehicle 40 from a parking or standing area (zone 1) to the final checkout zone (zone 2) in the vehicle checkout area 38, as represented in block 142. The customer then proceeds to the finalizing terminal 34. While the customer has been driving his or her vehicle to the final checkout zone and arriving at the finalizing terminal 34, the selected articles have been transported from the product stocking area 26 to one or more predetermined receptacles 88 in the order accumulation area 28, and a record of the accumulated articles has been printed by the terminal 30. The articles and the record of articles are then transported to the finalizing terminal 34 by means of the customer order conveyor 32, and in accordance with the customer queuing of incoming vehicles in "zone 1". The above activity is represented by block 144.

At the finalizing terminal 34, the customer gives his or her credit or other card to the operator of the finalizing terminal, who compares the receipt obtained by the customer from the terminal 24 with the record printed by the terminal 30. After determining that the two records compare properly, the operator charges the customer's account, whether it be a conventional credit card account or an electronic funds transfer account (block 146).

The customer's order is then loaded into his or her vehicle 40, completing the transaction, as represented in block 148.

Matsumori

Matsumori's invention relates to the field of home shopping systems, and in particular to a remote shopping and ordering system which enables items selected for purchase to be categorized in terms of weight, capacity and environmental requirements such that an order may be packaged for more efficient delivery and/or pick-up.

Matsumori teaches an Internet based home grocery shopping system that includes a home personal computer system configured for Internet access and communicating with a system server at the desired retail facility. The store server is configured to host an Internet access application program and includes an Internet communication interface, a control processor and a mass storage device. A master PLU database is stored in the mass storage device and contains data representing item identification, item price and item weights and measures metrics with each metric associated to a particular item of merchandise. The PLU database further includes an environmental storage metric which identifies the environment suitable for storing the corresponding item of merchandise.

In one aspect of the invention, a consumer accesses the store server over an Internet connection and selects various items of merchandise for purchase from a

menu or menus provided for such purpose. As items are selected for purchase, an application program opens and maintains a transaction log file including means for summing merchandise item information metrics, including the item identification, price, and weights and measures metrics. The application program further includes means for displaying the summed metrics on a display screen of the home personal computer system, thereby allowing a consumer to visually inspect at least the size and weight characteristics of an electronic order.

In a further aspect of the invention, the application program includes means for categorizing an electronic order according to an environmental storage metric, such that individual items comprising the order are each segregated into common environmental storage groupings. The items which have been segregated into common environmental storage groupings are subsequently stored in an environment designated by an environmental storage code, such as a freezer code, a refrigerator code, and a room temperature storage code. In this manner, a grocery store is able to appropriately package and store ordered items in an appropriate environment while awaiting the customer's arrival for pick up, or during delivery of the items to a customer's home.

Matsumori teaches (column 8, line 55, to column 9, line 6) that:

An additional advantage of these categorization features according to the invention are the assistance that they are able to give a store in providing pick-up and delivery service. As a consumer completes their order, stock clerks are able to pull the items from the store or warehouse shelves and are able to group the items according to their environmental storage requirements. A customer's frozen foods order can then be packaged and maintained in a freezer section until either the customer arrives to pick-up the order or until the store delivery service is ready to deliver the order to the customer. Likewise, food items requiring refrigeration may be stored in a refrigeration section while the room temperature items may be packaged and stored without any environmental constraints. These features are also particularly useful if a delivery service vehicle is provided with freezer, refrigerator and room temperature storage compartments, such that the various portions of a customer's order may be maintained in an appropriate environment during delivery.

Hall

Hall's invention relates to methods and systems that enable service providers to expedite services to customers in a mobile environment, and more particularly, to methods and systems that enable service providers to receive an order from customers in a mobile environment and schedule the completion of the customer's order to coincide with the customer's arrival at a local facility able to satisfy the customer's order. Hall teaches (column 5, lines 8-12) that the mobile customer uses a communications device, such as a cellular phone or laptop computer communicating in a wireless mode or over the Internet, to order goods or services from a service provider. A tracking device collocated with the mobile customer allows a mobile location determination

system to determine the customer's location and transmit it to the service provider. The service provider uses the customer's location to identify a local facility that can satisfy the customer's order. The service provider transmits the order to the local facility and schedules the completion of the order to coincide with the customer's arrival at the local facility. To further expedite the order process, the service provider also can request and receive payment electronically.

Figure 1 illustrates the basic components of the system. The system includes a Customer 100, mobile customer premises equipment ("MCPE") 105, a mobile location determination system ("MLDS") 145, service provider's system ("SPS") 150, and Financial System 158. Customer 100 is a person or entity in a mobile environment that would like to place an order with the service provider. Customer 100 may be, for example, a person traveling in an automobile equipped with a MCPE 105.

MCPE 105 is a communications device preferably with software programming capabilities. MCPE 105 may be implemented, using a variety of devices such as a cellular phone, preferably with voice-activated dialing, a personal digital assistant ("PDA") having voice recognition and sound capabilities, or a special information device developed specifically for use in automobiles (such as a dashboard-mounted map and information display screen). MCPE 105 preferably includes a receiver that could be

used by MLDS 145 to determine the customer's geographic location. One example of a suitable receiver is one of the type currently used in automobile navigation systems to receive satellite signals from the Global Positioning System ("GPS").

Claim 12

We sustain the rejection of claim 12 under 35 U.S.C. § 103.

Claim 12 reads as follows:

A method of selling merchandize, comprising:
receiving an order from a customer for a product desired to be picked up by the customer at a given location;
readying said product for customer pickup at said given location after receipt of said order;
detecting presence including a generally unique identifier of said customer a predetermined distance from said given location after readying said product;
directing said customer to one of a plurality of loading stations at said given location after detecting presence of the customer; and
associating said product with said customer and moving said product to said one of a plurality of loading stations for customer pickup responsive to detecting the presence of the customer.

Having determined the scope and content of the prior art above, the differences between the prior art and the claims at issue need to be ascertained. See Graham v. John Deere Co., 383 U.S. 1, 17-18, 148 USPQ 459, 467 (1966). Based on our analysis and review of Domain and claim 12, it is our opinion that the differences are

- (1) detecting presence including a generally unique identifier of the customer a predetermined distance from the given location after readying the product; and
- (2) associating the product with the customer and moving the product to the one of a plurality of loading stations for customer pickup responsive to detecting the presence of the customer.

With regard to this difference, in applying the above-noted test for obviousness, we conclude that it would have been obvious at the time the invention was made to a person having ordinary skill in the art to have modified the express service of Domain as suggested by the retail checkout system of Jenkins. In that regard, it is our opinion that it would have been obvious to provide the express service of Domain with an employee on foot at the express stacking area 162 ("zone 1") carrying a wireless transceiver to communicate the order of customer queuing to another employee, who then places the customer's order on the conveyor branch 138 for delivery to the correct express delivery window ("zone 2"). The motivation for this modification comes from Jenkins teachings of assuring the customers are attended to on a "first arrived, first served" basis, as they approach "zone 1" in their vehicles and Domain's silence as to how the correct order is associated with the arrival of the express service customer.

The appellant argues (brief, pp. 15-16) that claim 12 is patentable over the combination of Domain and Jenkins. The appellant asserts that neither Domain nor Jenkins teach (1) "the step of directing said customer to one of a plurality of a loading stations at said given location responsive to detecting the presence of the customer," or (2) "the step of associating said product with said customer and moving said product to said one of a plurality of loading stations for customer pickup responsive to detecting the presence of the customer." The appellant further asserts that Jenkins is not properly combinable with Domain since the references do not suggest their combination.

We find the appellant's arguments unpersuasive for the following reasons. First, Domain teaches the step of directing a customer to one of the plurality of express loading stations at the given location responsive to detecting the presence of the customer at the express stacking area 162. Second, Domain as modified by Jenkins would detect the presence of the customer at the express stacking area 162 ("zone 1") by an employee on foot. The employee would then notify another employee to deliver the customer's order to the correct express delivery window ("zone 2"). The customer would be directed to the correct express delivery window. At the correct express delivery window, the customer's order would be delivered to (i.e., associated with) the

customer. Third, the combination of Domain and Jenkins is proper since the references themselves provide sufficient motivation for their combination as set forth above.

For the reasons set forth above, the decision of the examiner to reject claim 12 under 35 U.S.C. § 103 is affirmed.

Claims 13 to 48

The appellants have grouped claims 12 to 48 as standing or falling together. Thereby, claims 13 to 48 fall with claim 12. See In re Young, 927 F.2d 588, 590, 18 USPQ2d 1089, 1091 (Fed. Cir. 1991); In re Nielson, 816 F.2d 1567, 1572, 2 USPQ2d 1525, 1528 (Fed. Cir. 1987); and In re Wood, 582 F.2d 638, 642, 199 USPQ 137, 140 (CCPA 1978). Thus, it follows that the decision of the examiner to reject claims 13 to 48 under 35 U.S.C. § 103 is also affirmed.

Claims 49 to 61

We will not sustain the rejection of claim 49 under 35 U.S.C. § 103.

Claim 49 reads as follows:

A system for selling groceries to customers, comprising:
a computer for receiving an order for grocery products from a customer;

a storage area containing different groceries including the grocery products ordered by the customer;
a plurality of loading stations at which groceries can be loaded into customer vehicles;
detection apparatus for detecting the arrival including a generally unique identifier of the customer to pickup previously ordered products; and
a transfer mechanism responsive to detection of the customer by the detection apparatus for moving the products from the storage area to a loading station at which the customer can pickup the product.

The appellant argues (brief, p. 16) that independent claim 49 is patentable over Domain and Jenkins since neither Domain nor Jenkins teaches or suggests either (1) a detection apparatus for detecting the arrival including a generally unique identifier of the customer to pickup previously ordered products, or (2) a transfer mechanism responsive to detection of the customer by the detection apparatus for moving the products from the storage area to a loading station at which the customer can pickup the product. We agree. In that regard, while the teachings of Domain and Jenkins are combinable together in the manner set forth above with respect to claim 12, the resulting system would include an employee detecting the arrival including a generally unique identifier of the customer to pickup previously ordered products, not a **detection apparatus** for detecting the arrival including a generally unique identifier of the customer to pickup previously ordered products. Likewise, the resulting system of the combination of Domain and Jenkins would include a transfer mechanism responsive to detection of the customer by an employee for moving the products from the storage

area to a loading station at which the customer can pickup the product, not a transfer mechanism responsive to detection of the customer **by the detection apparatus** for moving the products from the storage area to a loading station at which the customer can pickup the product. Accordingly, claim 49 is not suggested by the combined teachings of Domain and Jenkins.

For the reasons set forth above, the decision of the examiner to reject independent claim 49, and claims 50 to 61 dependent thereon, under 35 U.S.C. § 103 is reversed.¹

Claim 1

We sustain the rejection of claim 1 under 35 U.S.C. § 103.

Claim 1 reads as follows:

A method of selling groceries, comprising:
receiving an online order from a customer for grocery products the customer desires to pick up at a given location, said order being received from the customer while the customer is at a location remote from said given location;
electronically processing payment information for said order;

¹ We have reviewed the references to Matsumori, Ruppert and Hall additionally applied in the rejection of claims 50, 52, 55 to 57, 60 and 61 but find nothing therein which makes up for the deficiencies of Domain and Jenkins discussed above regarding claim 49.

retrieving said grocery products from a storage area containing a plurality of such products and maintaining said retrieved grocery products in generally the same temperature conditions as said products were kept in the storage area to inhibit spoilage of said products;

detecting arrival including a generally unique identifier of said customer a predetermined distance from said given location after retrieving said grocery products;

dynamically selecting one of a plurality of loading areas at said given location based on availability and directing said customer to said selected loading area; and

moving said grocery products to said selected loading area for customer pickup responsive to detection of said customer.

In our view, the combined teachings of Domain, Jenkins and Matsumori are suggestive of the subject matter of claim 1 for the reasons that follow. First, the teachings of Domain and Jenkins are combinable for the reasons set forth above with respect to claim 12. Second, the teachings of Matsumori would have made it further obvious at the time the invention was made to a person having ordinary skill in the art to have modified the express service of Domain to accept online orders in addition to telephone and facsimile orders so as to permit remote ordering via the Internet. Third, the teachings of Matsumori would have made it further obvious at the time the invention was made to a person having ordinary skill in the art to have modified the express service of Domain so that after retrieving grocery products from their storage area such products are maintained in generally the same temperature conditions as the products

were kept in the storage area to inhibit spoilage of the products while waiting for the customer to arrive at one of the express drive-up windows.

The appellant argues (brief, pp. 9-13) that claim 1 is patentable over the combination of Domain, Jenkins and Matsumori. First, the appellant asserts that Domain does not teach or suggest receiving an **online** order from a customer for grocery products the customer desires to pick up at a given location, said order being received from the customer while the customer is at a location remote from said given location. Second, the appellant argues that modifying Domain to include an Internet based ordering system that receives online orders as taught by Matsumori would preclude the visual verification of the customer required by Domain when placing the order. Third, the appellant asserts that neither Domain nor Jenkins teach either (1) "detecting arrival including a generally unique identifier of said customer a predetermined distance from said given location after retrieving said grocery products;" or (2) "moving said grocery products to said selected loading area for customer pickup responsive to detection of said customer." Fourth, the appellant further asserts that Jenkins is not properly combinable with Domain since the references do not suggest their combination.

We find the appellant's third and fourth arguments unpersuasive for the reasons set forth above with respect to claim 12. As to the appellant's first and second arguments, we agree that Domain does not teach or suggest receiving an **online** order from a customer for grocery products the customer desires to pick up at a given location, said order being received from the customer while the customer is at a location remote from said given location. However, since the rejection is under 35 U.S.C. § 103, this determination is of little value since the combined teachings of the applied prior art would have made it obvious at the time the invention was made to a person having ordinary skill in the art to have modified the express service of Domain to accept online orders in addition to telephone and facsimile orders so as to permit remote ordering via the Internet as suggested and taught by Matsumori. When it is necessary to select elements of various teachings in order to form the claimed invention, we must ascertain whether there is any suggestion or motivation in the prior art to make the selection made by the appellant. The extent to which such suggestion must be explicit in, or may be fairly inferred from, the references, is decided on the facts of each case. In this case, it is our opinion that the updating of the express service of Domain to accept online remote ordering via the Internet (a service not commercially utilized at the time Domain's patent application was filed) in addition to telephone and facsimile orders

would have been obvious at the time the invention was made to a person having ordinary skill in the art.²

For the reasons set forth above, the decision of the examiner to reject claim 1 under 35 U.S.C. § 103 is affirmed.

Claims 4 to 11

The appellants have grouped claims 1 and 4 to 11 as standing or falling together. Thereby, claims 4 to 11 fall with claim 1. Thus, it follows that the decision of the examiner to reject claims 4 to 11 under 35 U.S.C. § 103 is also affirmed.

Claim 2

We sustain the rejection of claim 2 under 35 U.S.C. § 103.

Claim 2 reads as follows:

The method of Claim 1 wherein receiving said order comprises receiving an order at a Web server from a remote client machine operated by said customer.

² In an obviousness assessment, skill is presumed on the part of the artisan, rather than the lack thereof. In re Sovish, 769 F.2d 738, 743, 226 USPQ 771, 774 (Fed. Cir. 1985).

The appellant argues (brief, p. 14) that claim 2 is patentable over the combination of Domain, Jenkins and Matsumori. We do not agree. As set forth above with respect to claim 1, it is our view that the teachings of Matsumori would have made it obvious at the time the invention was made to a person having ordinary skill in the art to update the express service of Domain to accept online remote ordering via the Internet (a service not commercially utilized at the time Domain's patent application was filed) in addition to telephone and facsimile orders. The teachings of Matsumori would also have made it obvious at the time the invention was made to a person having ordinary skill in the art to have modified Domain's express order receiving system to receive an Internet order via a Web server.

For the reasons set forth above, the decision of the examiner to reject claim 2 under 35 U.S.C. § 103 is affirmed.

Claim 3

We sustain the rejection of claim 3 under 35 U.S.C. § 103.

Claim 3 reads as follows:

The method of Claim 2 wherein said client machine comprises a wireless communications device located in a vehicle in which said customer is seated.

The appellant argues (brief, p9. 14-15) that Hall is not properly combinable with Domain or Jenkins. We do not agree. In our view, the teachings of Hall would have made it further obvious at the time the invention was made to a person having ordinary skill in the art to have modified Domain's express order receiving system to receive an Internet order sent from a wireless communications device located in a vehicle in which the customer placing the order is seated.

For the reasons set forth above, the decision of the examiner to reject claim 3 under 35 U.S.C. § 103 is affirmed.

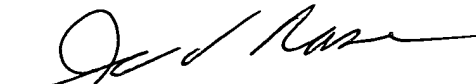
CONCLUSION

To summarize, the decision of the examiner to reject claims 1 to 61 under 35 U.S.C. § 103 is affirmed with respect to claims 1 to 48 and reversed with respect to claims 49 to 61.

No time period for taking any subsequent action in connection with this appeal
may be extended under 37 CFR § 1.136(a).

AFFIRMED-IN-PART


CHARLES E. FRANKFORT
Administrative Patent Judge


JEFFREY V. NASE
Administrative Patent Judge


ROBERT E. NAPPI
Administrative Patent Judge

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Application No. 09/598,196

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